IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

OP.No. 29730 of 1999(L)

PETITIONER:

A.LEELAMMA, RETIRED ADDITIONAL SECRETARY TO GOVERNMENT, LAW DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, RESIDING AT KOKKAPPALLIL HOUSE, KAVADIYAR, THIRUVANANTHAPURAM.

BY ADV. SRI.FIROZ K.ROBIN

RESPONDENTS:

----

1. **STATE OF KERALA, REP.BY ITS SECRETARY, SC/ST DEVELOPMENT DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

2. **CHAIRMAN, SCRUTINY COMMITTEE FOREST VERIFICATION OF SC/ST CLAIMS, SECRETARIAT, THIRUVANANTHAPURAM.**

3. **DIRECTOR OF KIRTADS, KOZHIKODE.**

BY GOVERNMENT PLEADER SRI.SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

==========

O.P.No.29730 of 1999

==========

Dated this the 23rd day of January, 2007

J U D G M E N T

The petitioner in this original petition is an employee under the Government of Kerala, who obtained employment after availing of reservation benefits applicable to the members of scheduled caste, representing herself to be belonging to the SC community of Hindu Cheramar. However, her caste status was inquired into by the KIRTADS which reported that the petitioner does not belong to a Scheduled Caste. This report was confirmed by the Scrutiny Committee. On the basis of such reports, prosecution proceedings have been initiated against the petitioner. However, even before the orders of the scrutiny committee, the petitioner retired from service. The petitioner now challenges the prosecution proceedings directed to be initiated as per Ext.P11 and also seeks pensionary benefits for service rendered by her under the Government of Kerala. Regarding the prosecution, the petitioner

submits that by virtue of the decision in Sreekumary v. State of Kerala reported in 2006(1) KLT 144, the petitioner cannot be prosecuted because the community certificate on the basis of which the petitioner obtained employment was issued prior to the coming into force of the Scheduled Castes and Scheduled Tribes Regulation of Issue of Community Certificates Act, 1996 and the Act came into force only on 1.12.1996. In this regard I find that in Ext.P11 order dated 29.10.1999, wherein the Government has directed initiation of proceedings against the petitioner, there is no mention that the prosecution is under 1996 Act. It only says that "the petitioner be prosecuted for making a false claim as to the caste status to deprive the members of the Scheduled Castes of their benefits thereby exploiting them for unlawful gains". In the above circumstances, I am of opinion that the petitioner should take up all her contentions including the contention based on the decision in Sreekumary's case (supra) as and when prosecution proceedings are initiated against her.

Further, I find that in this original petition the petitioner was not able to obtain any stay of Ext.P11 order dated 29.10.1999. However, the petitioner submits that no prosecution proceedings have been launched against her so far. In the above circumstances, I am not inclined to interfere with the proceedings at this stage and leave it to the petitioner to challenge in prosecution proceedings as and when the same is launched.

2. Regarding the claim of the petitioner for pensionary benefits, the petitioner relies on the decisions in Kumari Madhuri Patil & anr. v. Addl. Commissioner, Tribal Development and Ors. reported in (1994) 6 SCC 241, and State of Maharashtra v. Milind and ors. reported in (2001) 1 SCC 4 in support the proposition that although she has now been found to be not belonging to a scheduled caste, the only consequence would be to deny her any future benefits on the basis that, she is a scheduled caste. In short the submission of the petitioner is that since the pension is only a

consequence of her service already put in, she should not be deprived of that benefit. I am of opinion that even going by the decisions of the Supreme Court relied on by the petitioner, as above, themselves, the petitioner would be disentitled to claim any further benefits of her service which was on the basis of a wrong community certificate. After having obtained an employment on the basis of a false community certificate, the petitioner cannot now contend that now that she has retired from service after serving the Government for such a long period, she should not be denied pensionary benefits on the basis of her service.

In the above circumstances, I do not find any merit in the original petition and accordingly the same is dismissed with the above reservations in favour of the petitioner regarding the prosecution proceedings which may be launched against her.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

==========

O.P.No.29730 of 1999

==========

J U D G M E N T

23rd January, 2007